

REMARKS

Claims 1 and 3-13 are pending in this application. Claims 1, 3-6 and 10-13 are allowed. Claims 7-9 are rejected. Claim 7 is currently amended. Reconsideration is respectfully requested.

Claims 7-9 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. More particularly, the rejection asserts that the claims are directed to apparatus which could be considered a machine except that the body of the claim recites only logic. It is well understood in the art that software must be executed by hardware in order to have functionality. However, claim 7 is currently amended to specifically recite a network device which is characterized by any functionality in the body of the claim that might be associated with software. Applicant suggests that the amendment renders the claim statutory. "The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to - process, machine, manufacture, or composition of matter - [provided the subject matter falls into at least one category of statutory subject matter] but rather on the essential characteristics of the subject matter, in particular, its practical utility."<sup>1</sup> A claim does not become non-statutory simply because it includes a computer program. As stated in MPEP 2106.01:

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing,

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<sup>1</sup> Interim Guidelines for Examination of Patent Applications  
for Patent Subject Matter Eligibility

i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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